

ALJ attachment in 01-0662

Changes to Procedural History (beginning with paragraph 14).

The ALJ issued a Proposed Interim Order for the Phase IA Investigation on December 6, 2002. Thereafter, Briefs on Exceptions were filed by: Staff, AI, AT&T, WorldCom, the AG, Z-Tel, XO and McLeodUSA/TDS Metrocom. Further, Reply Briefs to Exceptions were filed by: Staff, Ameritech, AT&T, WorldCom and Z-Tel. All of the arguments set out in those briefs were considered, and inform the Phase 1 Interim Order on Investigation, that was entered by the Commission on February 6, 2003.

Along this same time, however, the procedural history of Phase II was already unfolding.¹ Pursuant to the Initiating Order for this proceeding, Phase II “shall cover all remaining OSS issues and any other relevant issues not addressed in the first phase.” Initiating Order at 3, Docket 01-0662 (October 24, 2001).

On December 23, 2002 BearingPoint Inc. (formerly known as KPMG Consulting) tendered an Interim Report of its review of SBC Illinois’ performance metrics conducted pursuant to the provisions of the Merger Order in Docket 98-0555.

Further, on January 17, 2003, SBC Illinois submitted the results of the independent audit of SBC Illinois’ Reported Performance Results performed by the certified public accounting firm of Ernst Young, LLP (“E&Y”). This was included, as an attachment, to the affidavit of SBC Illinois witness James Ehr. At the same time, SBC Illinois also submitted three months of data showing its actual performance results for the months of September, October, and November, 2002.

On January 16, 2003, the ALJ issued a ruling that dismissed the previously - fashioned Phase IB proceeding and merged the performance plan issue into Phase II. Thereafter, on January 17, 2003, AT&T, WorldCom and McLeod filed an expedited Motion for Interlocutory Review, and a Motion in Limine, seeking to preclude the Commission from considering the Company’s performance remedy plan. On January 23, 2003, the Commission denied both of these motions.

The schedule for Phase II was established by Commission action on January 30, 2003. In accordance therewith, a series of transcribed workshop meetings presided over by the ALJ, was held on the dates of February 5 and February 10-13, 2003. At each of these meetings, the witnesses were sworn and subject to examination by Staff

¹ : During the Phase I proceedings (and correspondingly, in the “Phase I” portions of this Order), the Company is identified as “Ameritech,” “Ameritech Illinois,” or “AI.” As such, exhibits submitted by the prospective applicant and entered into the record during Phase I are identified as “Am. Ill. Ex.____.” During the Phase II proceeding, and in the “Phase II” portions of this order, however, the Company is identified as “SBC Illinois” and its exhibits are identified as “SBC Ex.____.”

and all interested parties. As such, BearingPoint was available for questioning through its representatives John Eringis, Mary Ann Quinn and Andrew Walker. E&Y also appeared and responded to questions through its representatives Dan Dolan, Brian Horst and Kevin Gray. In addition, the following SBC Illinois witnesses appeared for questioning on the record and under oath: Scott Alexander; Carol Chapman; Mark Cottrell; James Ehr; Patricia Fleck; Mike Silver; and Karl Wardin. Also on February 10, 2003, a special walk-through of the Company's proposed Compromise Remedy Plan was conducted by SBC Illinois witness Ehr for the benefit of Staff and all other interested parties.

Prior to these meetings, i.e., on January 17, 2003, SBC-Illinois had distributed to Staff and the parties, the affidavits of James Ehr and Mark Cottrell. And, on January 23, 2003, SBC Illinois filed the additional Phase II affidavits of James Ehr, Mark Cottrell, Patricia Fleck, Carol Chapman, John Muhs, Michael Silver, Karl Wardin and Scott Alexander.

Pursuant to the schedule adopted by the Commission, parties were given the opportunity to submit testimony through affidavits, and present argument via written comments and/or briefs at their own choosing.

On February 21, 2003, Initial Comments on Phase II issues were served by AT&T, McLeodUSA, TDS Metrocom and Z-Tel. The Z-Tel comments were verified by Ronald Walters.

For its part, AT&T also distributed the Affidavits of Timothy Connolly (AT&T Ex. 1.0), Dr. Michael Kalb (AT&T Ex. 2.0), Sarah DeYoung and Walter Willard (AT&T Ex. 3.0), and James Henson (AT&T Ex. 4.0).

TDS Metrocom circulated the Affidavit of Rod Cox. WorldCom submitted the Affidavits of Sherry Lichtenberg and Karen Kinard.

CIMCO Communications distributed two Affidavits, both of which were verified by William Dvorak. Forte Communications served two Affidavits, both of which were verified by Thomas Waterloo.

Staff sent out the Affidavits of Mark Hanson, Jeffrey Hoagg, Robert Koch, George Light, Sam McClerren, Russell Murray, A. Olusanjo Omoniyi, Dr. Melanie Patrick, Marci Schroll, Genio Staranczak, Nancy Weber and Dr. James Zolnierrek.

On February 19, 2003, SBC Illinois and Staff entered into a "Third Stipulation Regarding the Position of Staff Witness Robert F. Koch on Certain Phase 2 Compliance Issues". Pursuant to this document, these parties agreed that several of SBC Illinois rates were both compliant with the requirements of the Commission's order in Docket 00-0700, and TELRIC-compliant.

Further, by letter dated February 27, 2003, AT&T, WorldCom, and SBC Illinois indicated their agreement that certain disputes arising from the recent six-month collaborative would be presented to the Commission for resolution in this proceeding.

SBC Illinois circulated Reply Comments on March 3, 2003 as well as Rebuttal Affidavits from the following affiants: Denise Kagan/Mr. Mark Cottrell, Deborah Heritage, Valentine, Carol Chapman, John Muhs, Karl Wardin, Patricia Fleck, James Ehr, Scott Alexander, Mark Cottrell, Michael Silver and Justin Brown.

On March 12, 2003, Rebuttal Affidavits were served by AT&T, WorldCom, Forte Communications, CIMCO Communications, WorldCom and the Staff.

AT&T distributed the Rebuttal Affidavits of Timothy Connolly (AT&T Ex. 1.1), Dr. Michael Kalb (AT&T Ex. 2.1), Sarah DeYoung and Walter Willard (AT&T Ex. 3.1) and Shannie Marin (AT&T Ex. 5.0).

WorldCom submitted the Rebuttal Affidavits of Karen Kinard and Sherry Lichtenberg. Forte Communications sent out a Reply Affidavit verified by Thomas Waterloo. CIMCO Communications circulated a Reply Affidavit verified by William Dvorak. TDS and McLeodUSA filed rebuttal comments. Z-Tel Communications filed comments supported by a verification by Ronald Walters.

Staff distributed the Rebuttal Affidavits of: Mark Hanson, Jeffrey Hoagg, Mr. Robert Koch, George Light, Sam McClerren, Russell Murray, A. Olusanjo Ominiya, Dr. Melanie Patrick, Marci Schroll, Genio Staranczak, Nancy Weber and Dr. James Zolnierak. Staff also filed rebuttal comments.

SBC Illinois circulated its surrebuttal comments and surrebuttal affidavits on March 13, 2003. Specifically, Surrebuttal Affidavits were submitted by Scott Alexander, Carol Chapman, Karl Wardin, John Muhs, James Ehr, Justin Brown, Mark Cottrell/Denise Kagan, Mark Cottrell and Michael Silver. The Staff of the Illinois Commerce Commission also filed comments on March 13, 2003.

In the end, Briefs/Draft Proposed Orders were filed on March 25, 2003 by SBC Illinois, Staff, AT&T, WorldCom, CIMCO Communications, Forte Communications, TDS Metrocom, McLeodUSA and Z-Tel Communications.

Subsequent to discussions had at the March 26, 2003 status hearing, the parties were instructed to formally file their respective Phase II affidavits and comments along with other agreed-upon documents. All total, and unless disputed, this would constitute the record for the case. On April, 2003, the record was marked "Heard and Taken."

A Proposed Final Order incorporating both the Phase I, and the Phase II proceedings issued on April 8, 2003.

To resolve a dispute arising from Staff changes to its Exhibit 41.0, the ALJ provided SBC Illinois with opportunity to file additional surrebuttal on the narrow issues at hand within 48 hours of her ruling. On April 11, 2003, as directed, the Company filed the Supplemental Affidavit of James Ehr, i.e., SBC Illinois Ex. 2.4. Parties were expected to address these matters in their exceptions arguments.

Briefs on Exceptions were scheduled for filing on April 18, 2003.

Scope and Outline of the Final Order on Investigation

In accord with the Initiating Order's direction, the Phase I interim order covered as much of the competitive Checklist Items as possible absent OSS test results. It also considered the evidence, issues and positions pertinent to Track A compliance under Section 271 (c)(1)(A), and looked to whether Ameritech Illinois' entry into the in-region interLATA market is consistent with the public interest, convenience and necessity.

Beginning with the Phase I Interim Order, the Commission has now incorporated the evidence, issues and arguments on Phase II matters into the final Order at hand. As such, the Final Order on Investigation covers all of the areas addressed in the Interim Order and further includes the Phase II issues and showings, i.e., the adequacy of SBC Illinois' OSS; an evaluation of the Company's actual performance; and, a consideration of the Company's proposed Compromise Remedy Plan, together with a review of the Company's response to the Phase I Order's directives.

In whole of this investigation, it is incumbent upon AI to demonstrate compliance with the detailed requirements of the Section 271 checklist and the implementing orders of the FCC and this Commission. This was made clear by the Initiating Order's pronouncement that AI bears the burden of proof in this proceeding and that it is to be the first to file testimony. The FCC has similarly emphasized that the 271 applicant bears the burden of showing compliance even if no party challenges its compliance with a particular requirement. Thus, in each of the particulars, AI needs to establish the requisite prima facie showing.

By the same token, Staff and the other interested parties have the burden of clearly stating and supporting their respective issues and positions. This investigation is a fact-driven inquiry, such that mere arguments or conclusory assertions do not suffice. This Commission, likewise, should not be put to the burden of ferreting out issues or positions that are not set out clearly.

All total, the Commission has been intent on collecting, recording and evaluating necessary and relevant information in order to present a credible and comprehensive consultative report to the FCC. The massive record before us bears testament to the success of our efforts as does the breadth of the instant order. As broad as this proceeding might be, however, it has certain limitations. We are examining information to assess AI's compliance with existing obligations – not to entertain novel issues or reconsider settled decisions or to impose new obligations. The latter would be most inappropriate given that this proceeding is not set up to adjudicate the rights of any

parties. In the same vein, we are not in any position to excuse AI from any of its existing obligations.

The instant Final Order is organized as follows:

In Part I, the Commission sets out the general statutory framework of Section 271.

In Part II, we examine SBC Illinois' showing of eligibility under the entry requirements of Section 271 in light of all the evidence and arguments.

In Part III, we review the AI showings of compliance with respect to each of the 14 competitive checklist items set out in Section 271, along with the factual disputes and arguments, if any, raised on the record. With respect to each item, we set out a summary of the federal standards for review based on the federal Act and FCC pronouncements as adapted from Appendix C of the New Jersey 271 Order. Along therewith, we include a state perspective – that identifies any Commission action that is relevant to the checklist item or to issues raised thereunder. We separately detail the extensive and explicit recommendations for compliance set out by Staff for many of the checklist items. Having adopted certain of these recommendations in our Phase I Order, we check SBC Illinois' compliance with any of the remedial actions that interim order had directed.

Under Phase II, the third party testing of Ameritech Illinois' operations support systems ("OSS") by BearingPoint comes squarely into view together with a review of three consecutive months of data reporting Ameritech Illinois' compliance with performance measures. The performance data is a large factor in our Phase II assessment and, in light of the BearingPoint testing and the Ernest and Young audit, we consider the arguments and showings that challenge the reliability of the Company's performance data.

In Part IV, the Commission examines the "public interest" positions of all the interested parties and addresses a number of arguments and proposals that fall outside the competitive checklist requirements. While the Commission is focusing on Section 271(c) obligations, there are, in some instances, state-based requirements that go beyond the federal standards for checklist compliance. A failing in this regard, is valid for our consideration, but must be identified as such, i.e., an obligation outside the checklist. In this

section, we further address the Company's proposed Performance Assurance Plan and also aim to resolve a dispute between certain parties that arose in the recent six-month collaborative.

It is our intent, as near as possible, to address the issues and positions relative to state matters separate from federal concerns. In this way, the Commission is fully informed as to all aspects of compliance, yet able to maintain a clear perspective when consulting with the FCC on the Section 271(c) obligations.

The main focus, here and now, is on AI's compliance with Section 271 requirements as they have been set out in the federal Act, and as described, implemented and addressed by the FCC. This constitutes our standard for review. We believe it critical to establish just what compliance is. In looking to the dictionary definitions, we see that:

To comply is to act in accordance with another's command, request, rule, or wish. American Heritage Dictionary.

To yield; to accommodate, or to adapt oneself to; to act in accordance with; to accept. Black's Law Dictionary

We trust that all parties have proceeded to address the issues of Section 271 compliance on this basis.